

In re: BERT SMITH, IV d/b/a B4 CATTLE COMPANY, AND B4 CATTLE COMPANY, INC.
P&S Docket No. D-02-0010.
Decision and Order.
Filed August 12, 2002.

P&S – Default – Bond, failure to maintain adequate, bond – Custodial account, failure to maintain adequate – Purchase price, failure to pay full.

David Richman, for Complainant.
Respondents, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 *et seq.*) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that Respondents willfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 *et seq.*) The complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*), hereinafter “Rules of Practice,” were mailed to the Respondents via certified mail on March 22, 2002. As indicated by the return date stamped on the return receipt cards, copies of the complaint were received by both Respondents, on March 25, 2002. Accompanying the complaint was a cover letter informing Respondents that an answer must be filed within twenty (20) days of service, and that failure to file an answer would constitute an admission of all of the material allegations in the complaint and a waiver of the right to an oral hearing.

Respondents have failed to file an answer within the time period prescribed by the Rules of Practice (7 C.F.R. § 1.136), and the material facts alleged in the complaint, which are admitted by Respondents’ failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Bert Smith, IV, hereinafter referred to as “Respondent Smith, is an individual who was doing business as B4 Cattle Company until September 5, 2001, the date on which B4 Cattle Company was incorporated under the laws of the Commonwealth of Virginia as the successor entity B4 Cattle Company, Inc. Respondent Smith’s business mailing address is P.O. Box 1610, Chilhowie, VA 24319.

2. Respondent Smith is, and at all times material herein was:

(a) Engaged in the business of a dealer buying and selling livestock in

commerce for his own account;

(b) Either doing business as B4 Cattle Company or was president and 100% shareholder of B4 Cattle Company, Inc.;

(c) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for his own account or the accounts of others;

(d) Responsible for the direction, management and control of the day-to-day operations of B4 Cattle Company and its successor entity B4 Cattle Company, Inc.

3. B4 Cattle Company, Inc., hereinafter referred to as the "Corporate Respondent," is a successor entity to B4 Cattle Company, and a corporation organized and existing under the laws of the Commonwealth of Virginia, whose business mailing address is P.O. Box 1610, Chilhowie, VA 24319.

4. The Corporate Respondent is, and at all times material herein was:

(a) Engaged in the business of a dealer buying and selling livestock in commerce for its own account; and

(b) Not registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce for its own account or the accounts of others.

5. Respondent Smith is the alter ego of the Corporate Respondent.

6. As set forth in section II of the complaint, Respondent Smith, doing business as B4 Cattle Company, and/or as President of the successor entity B4 Cattle Company, Inc., engaged, and has continued to engage, in the business of a dealer subject to the Act without obtaining an adequate bond or bond equivalent.

7. As set forth in section III of the complaint, Respondent Smith, doing business as B4 Cattle Company, and the Corporate Respondent issued checks in payment for livestock purchases which were returned unpaid by the bank upon which they were drawn because Respondents did not have and maintain sufficient funds on deposit and available in the accounts upon which such checks were drawn to pay such checks when presented.

8. As set forth in section IV of the complaint, Respondent Smith, doing business as B4 Cattle Company, and the Corporate Respondent, in connection with their operations subject to the Act, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

Respondents did not file an answer within the time period prescribed by section 1.136 of the Rules of Practice (7 C.F.R. § 1.136), which constitutes an admission of all of the material allegations in the complaint. Complainant has moved for the issuance of a Decision Without Hearing by Reason of Default, pursuant to section 1.139 of the Rules of Practice

(7 C.F.R. § 1.139). Accordingly, this decision is entered without hearing or further procedure.

Order

By reason of the facts alleged in finding of fact 6, the Respondents have

willfully violated section 312(a) of the Act (7 U.S.C. §§ 213(a)), and sections 201.29 and 201.30 of the Regulations (9 C.F.R. §§ 201.29, 201.30) .

By reason of the facts alleged in findings of fact 7 and 8, the Respondents have willfully violated sections 312(a) and 409 of the Act (7 U.S.C. §§ 213(a), 228b).

Respondents Bert Smith, IV and B4 Cattle Company, Inc., their agents and employees, directly or through any corporate or other device, in connection with their activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock;
2. Failing to pay, when due, the full purchase price of livestock;
3. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which the checks are drawn to pay the checks when presented; and
4. Engaging in business in any capacity for which registration and bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations, without registering and filing an adequate bond or its equivalent, as required by the Act and the regulations.

Respondent Bert Smith, IV is hereby suspended as a registrant under the Act for a period of ten (10) years. Provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order terminating the suspension may be issued at any time after the expiration of 390 days upon demonstration by Respondent Smith that he has obtained the required bond or bond equivalent, and that all unpaid livestock sellers identified in the complaint have been paid in full; and provided further that this order may be modified upon application to the Packers and Stockyards Programs to permit the salaried employment of Respondent by another registrant or packer after the expiration of the initial 390 days and upon demonstration of circumstances warranting modification of the order.

Respondent B4 Cattle Company, Inc. shall not be registered with the Secretary of Agriculture for a period of ten (10) years. Pursuant to section 303 of the Act (7 U.S.C. § 203), Respondent B4 Cattle Company, Inc. is prohibited from operating subject to the Act without being registered. Provided, however, that upon application to the Packers and Stockyards Programs, a supplemental order allowing Respondent B4 Cattle Company, Inc. to register with the Secretary of Agriculture may be issued at any time after the expiration of 390 days upon demonstration by Respondent B4 Cattle Company, Inc. that it has obtained the required bond or bond equivalent, and that all unpaid livestock sellers identified in the complaint have been paid in full.

This decision and order shall become final and effective without further proceedings thirty-five (35) days after service on Respondents, if it is not appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

[Note: This decision and Order became final October 31, 2002 - Editor]
